THE COMMONWEALTH OF MASSACHUSETTS 817PG128

West Tisbury
City or Town

BOARD OF APPEALS

Date: December 5, 2000

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of

hereby certifies that a Variance or Special Permit has been granted

To Pamela J. Kloberdanz

Address RR1 Box 556 P

City or Town Vineyard Haven MA 02568

affecting the rights of the owner with respect to land or buildings at 20 Old Coach Rd, Map 16, Lot 48, owned by Pamela J Kloberdanz and Agatha Breidenbach

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Edgartown, Mass. December 15, 2000
at 8 o'clock and 31 minutes A M
received and entered with Dukes County Deeds
book 817 page 128

Attest:
Deanne C. Powers Register

E. C. [illegible]
Chairman

Julie L Keefe
Clerk

FORM 1004 HOBBS & WARREN, INC., REVISED

Bk 817 Pg 123

**THE COMMONWEALTH OF MASSACHUSETTS**

**TOWN OF WEST TISBURY**

**BOARD OF APPEALS**

***DECISION OF THE BOARD OF APPEALS ON THE PETITION OF PAMELA J. KLOBERDANZ***

A Hearing was opened on Wednesday, August 30th, 2000 at 7:15 P.M. and concluded on Wednesday, November 1st, at the Town Hall, to act on the following:

An application for a Special Permit to allow the construction of a 14 ft by 20 ft addition to an existing 12 ft by 18 ft non-habitable studio that is less than 50 feet from a lot line, and for a Special Permit for a pre-existing, non-conforming home occupation on the premises of Map 16, Lot 48, West Tisbury MA 02575 owned by Pamela J. Kloberdanz and Agatha Breidenbach.

**Present:** Eric Whitman, Tucker Hubbell, Tony Higgins, Bob Schwier, Jim Rothschild
**Associate Members Present:** Toni Cohen, Nancy Cole

**The Board of Appeals voted unanimously to GRANT, with CONDITIONS, the following: 1)** An application requesting that a use begun legally, which is now a non-conforming use, be granted a Special Permit under Section 11.1-4A of the West Tisbury Zoning Bylaws, and therefore become a conforming use; i.e. a request that a Special Permit be granted for her pre-existing, non-conforming home occupation (permitted by right previous to November 18, 1997); and, **2.)** The request to construct a 16' by 20' addition to a 12' by 18' pre-existing, non-conforming, non-habitable structure that was previously built 21' from the lot line at the nearest corner, pertaining to Section 11.1-3 of the West Tisbury Zoning Bylaws.

**The Board finds that:**

1.) The construction applied for will not be substantially more detrimental to the neighborhood and that the construction is in harmony with the neighborhood and Town in scope, size, and design and that the conditions attached to this Special Permit will ensure that the use will not "...create hazards, unacceptable disturbances, unacceptable injury to the neighborhood, or unsightliness visible from any public way or neighboring property" as stated in Section 8.5-2G.

**2.)** The applicant filed an application for a Home Occupation Permit in cooperation with abutter Hartigan's request that she apply for this Permit and in cooperation with the Zoning Board condition of October 4, 2000 that an application for such a Permit be filed in order for the Board to continue

occupation bylaw in effect at the time of modification in 1997, and remains in compliance with the requirements of the 2000 bylaw Re Home Occupations.

3.) There is not a substantial change or extension in use and any enlargement of the use is due to the growth of the original, non-conforming use. The Island, the Town, and the neighborhood have experienced growth and increases in year round population and summer population with correspondingly increased traffic in the last decade, and any increase of client traffic to the applicant's home business is consistent with increase in traffic in the neighborhood from other sources, and not more detrimental to the neighborhood than the increase of traffic in general.

4.) This is a "benign" occupation, but the applicant's northwest abutter Hartigan finds the arrivals and departures of clients and the activity level on the premises to be disruptive and in need of restrictions in order to ensure the tranquility of the neighborhood and to ensure that the business remains the secondary use of the property and doesn't grow beyond that which is appropriate in the RU District.

5.) The West Tisbury Zoning Bylaws provide the opportunity to apply for extension and alteration to non-conforming uses and structures.

6.) The proposed addition does not add a new non-conformity and the addition is sited away from the lot line.

7.) The applicant has been a practitioner of therapeutic massage for 12 years on Martha's Vineyard, buying her West Tisbury Residence in 1992, and using the premises, including her home, as the base for her massage business. The business is divided between treating clients on the premises and off site, and is documented by news clippings and numerous letters of support from clients and neighbors to have longstanding presence and value in the community.

8.) The applicant, who has employees, has used her dwelling, as well as the outbuildings, to see clients. She plans to build an addition to one studio/shed in order to stop using her house as a primary space for her business. The other small shed on the property will be the second designated place of work, thus concentrating the massage work into two, consistently used, places on the property.

9.) The Conditions attached to these Permits shall ensure that this massage business will not grow beyond the size allowable by the Bylaw, or aggravate any existing problems perceived by the applicant's abutter to the northwest or any other persons in the immediate neighborhood, such as traffic, disturbance, or early and late business hours,

10.) The granting of these Permits will contribute to the continuation of West Tisbury as a diverse rural community and a town with a sense of community, as stated in West Tisbury's 1987 Master Plan. The granting of this home occupation will help maintain a socially and economically diverse rural town population that can offer varied skills, and services, that are based in West Tisbury, and thereby nourishing a sense of community that is valued as a positive aspect of residence in a small town. The protection of home-based businesses has been identified in the Master Plan as a part of the resource and character of the town worthy of protection, and the year 2000 Zoning Bylaw reinforces these conclusions.

11. The granting of these permits with conditions is consistent with the definition, goals, objectives and conclusions contained in West Tisbury's Master Plan concerning Home Occupations. Under Action to Protect Community Resources and Character it is stated: "Allow for a diversity of home-based businesses, with a permitting process to insure minimum conflict with surrounding land uses".
12.) There is not persistent, sound, vibration or odor as a result of the massage business.
13.) The premises are readily accessible to fire, police, and other emergency vehicles.
14.) The granting of this permit will not cause traffic congestion, impair pedestrian safety, or overload existing roads.
15.) This home business will not overload any municipal facility or any public or private water, sewage disposal or drainage system and the applicant has complied with the necessary permits from the Board of Health.
16.) The Findings and Conditions of this document apply to the Special Permit granted to Pamela J. Danz pertaining to her current, home-based, therapeutic massage business based at Map 16, Lot 48, West Tisbury MA, and the use and construction of the accessory building in question as it pertains to this home business.

**The Board grants this Special Permit with the following Conditions:**
1.) Before an Occupancy Permit may be issued, four (4) evergreen trees, of 6'-8' in height at the time of planting, shall be planted in close proximity to the "shed" on the northwest side in order to provide screening for abutter Hartigan.
2.) The hours that the business must keep for clients are as follows: Three days a week, 9 A.M. to 8:30 P.M. and three days a week, 7:30 A.M. to 6:00 P.M. with no business on the premises on Sundays. The applicant should notify the Town Building and Zoning Inspector of her intended schedule.
3.) The number of employees to be working on the premises at any one time is limited to three (3), including the applicant.
4) The premises approved for use by this home occupation are: 2 massage rooms and one attached office, with business NOT being conducted in the dwelling. The intent of this restriction is to limit to TWO the number of massage clients scheduled for appointments at any one time. The Board recognizes there may be times when clients and appointment times may overlap and necessitate the temporary setting up of a third table, but these would be exceptions, not usual practice.
5) There is to be no expansion of the present parking area.
6.) The accessory buildings used for the business are considered studio/workshop space, and thus are not permitted to be or have habitable, detached bedroom space unless a change in use Special Permit is applied for and granted

Board Members voted as follows:
**In Favor:** Whitman, Hubbell, Schwier, Higgins, Rothschild
Associate Board Members voted as follows:

**In Favor: Cole, Cohen**

**No Variance or Special Permit shall take effect until:**

1. A period of twenty days has elapsed from the date of the filing of the Board's written Decision with the Town Clerk, and the applicant has received a copy of the Decision bearing the certification of the Town Clerk that a period of twenty days has elapsed from the filing of the Decision and that no appeal has been filed, or the appeal has been denied or dismissed. A Certificate of Granting will also be issued.
2. The **Certified Decision** and the **Certificate of Granting** are recorded at the Dukes County Registry of Deeds and the recording fee has been paid at the Dukes County Registry of Deeds. **Only *Original Documents* will be accepted at the Registry.**
3. A receipt for the recording stamped by the Dukes County Registry of Deeds has been returned to the **Building & Zoning Inspector of West Tisbury** or to the office of the West Tisbury Board of Appeals who will turn over the receipt to the Building and Zoning Inspector.

This Lot is described in Book 584, Page 772, and dated July 17, 1992, and recorded in the Registry of Deeds, County of Dukes County. The location is 20 Old Coach Road, Map 16, Lot 48, West Tisbury, MA 02575. The records of this case are filed in the West Tisbury Town Hall.

**Date filed with Town Clerk:** ***November 15, 2000.*** **Case File 2000-30**
Any person aggrieved by this Decision of the West Tisbury Board of Appeals may appeal to Superior Court and must notify the Town Clerk of the action and submit a copy of the complaint within twenty days after the Decision has been filed in the office of the Town Clerk.

Julie Keefe
Administrative Assistant
West Tisbury Board of Appeals

December 5, 2000
I certify that no appeal has been filed.

TOWN CLERK
WEST TISBURY
MASS. 02575

Dang - CF 2000-30
0 - M 16, L 48

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RECORD OF VOTE

The following members of the Board of Appeals vote to grant a special permit subject to the above-stated terms:

E C Wtn

Roger W. Hallett

R.M.S.

Tom Carlson

The following members of the Board of Appeals are in opposition to the grant of the special permit:

Filed with the Town Clerk on Nov. 15, 2000

Town Clerk

Copy of Findings and Decision mailed to:

Pam Dang
E. Mendenhall
Theo Nix
Mr. Hartigan

Edgartown, Mass. December 15, 2000
at 8 o'clock and 30 minutes A M
received and entered with Dukes County Deeds
book 817 page 123

Attest:

Deanne E. Power Register